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13 ALTA BATES SUMMIT MEDICAL CENTER

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 COYNESS L. ENNIX, JR., M.D.,

17 Plaintiff,

18 v.

19 ALTA BATES SUMMIT MEDICAL CENTER,

20 Defendant.

21 CASE NO. C 07-2486 WHA

22 **OPPOSITION TO PLAINTIFF'S
MOTION TO CHANGE TIME
REGARDING THE BRIEFING AND
HEARING DATES RELATING TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

23 **DEPT:** Ctrm. 9, 19th Flr
JUDGE: Hon. William H. Alsup

24 **COMPLAINT FILED:** May 9, 2007
TRIAL DATE: June 2, 2008

1 **I. INTRODUCTION**

2 Ennix's proposal to extend the summary judgment deadlines is manifestly
 3 unreasonable because it would force ABSMC to unnecessarily incur substantial
 4 attorneys' fees. In particular, the motion in limine deadline is set for April 18, 2008—the
 5 day after the summary judgment hearing date proposed by Ennix. Because none of the
 6 alleged hardships cited in Ennix's moving papers have been caused by ABSMC, the
 7 Court should not alter the existing deadlines, which have been set in accordance with
 8 this Court's Local Rules.

9 **II. ARGUMENT**

10 **A. There Has Been No "Untimely" Document Production.**

11 As the primary grounds for his motion, Ennix argues that ABSMC "had yet
 12 to fulfill fact discovery obligations." This is simply untrue. Ennix's reference is to certain
 13 Surgery Peer review minutes that Judge Spero ordered ABSMC to produce on
 14 December 6, 2007. However, throughout this litigation ABSMC argued that it was not
 15 required to produce these documents. Indeed, it first objected to their production on
 16 November 28, 2007--more than three (3) months ago. Had Ennix wanted these
 17 documents earlier, he should have moved to compel earlier. Ennix's decision to delay
 18 such a motion is not grounds to extend the summary judgment deadlines.

19 **B. The Expert Witness Depositions Have No Bearing On The Summary
 Judgment Motion.**

20 Ennix disingenuously argues that ABSMC "timed" its motion to run
 21 concurrently with certain expert witness depositions. But Ennix fails to inform the Court
 22 that he is the one who requested a continuation of the expert discovery deadline.
 23 ABSMC asserted that an extension was unnecessary (as is expressly noted in the
 24 January 25, 2008 Stipulation and Order), but did not oppose the request. Ennix's
 25 decision to create these eleventh hour difficulties simply cannot be blamed on ABSMC.
 26 Moreover, none of the expert discovery at issue is needed to oppose the summary
 27 judgment motion.

C. The Deposition Of Dr. Steve Stanton Is Not Grounds To Extend The Summary Judgment Deadlines.

ABSMC agreed to produce Dr. Stanton for an additional hour of deposition in order to avoid a further discovery motion. In fact, ABSMC disputes that this additional hour is necessary. Moreover, because this one-hour deposition is set for March 4, 2008, Ennix will be able to incorporate the testimony into his opposition papers.

D. An Agreement Regarding The Racial Makeup Of The Medical Staff Should Not Delay The Summary Judgment Motion.

Ennix argues that the racial makeup of the medical staff is relevant to this case. But both parties have the same underlying factual data on this issue. Therefore it is irrelevant that the parties have yet to agree on a method to interpret this data. Ennix may urge whatever interpretation he wishes. And ABSMC will do the same. Obtaining the agreement of ABSMC is simply unnecessary with respect to the pending motion. Indeed, it may be that, notwithstanding their good faith efforts, the parties will never reach agreement on the interpretation of this data.

III. CONCLUSION

The current hearing date, April 3, 2008, is the last date that will allow ABSMC to avoid incurring the substantial attorneys' fees associated with preparing its motions in limine. Ennix has offered no good reason to change this date. Therefore his request should be denied.

DATED: February 29, 2008

Respectfully submitted,

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4830-2629-5042.1